

**UTAH AIR QUALITY BOARD WORKING  
LUNCH SESSION  
April 4, 2007**

**DRAFT NOTES**

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Fred Nelson was asked to go over the procedure and process information of the Board because of the new members.

Mr. Nelson first discussed their structure and authorities and the processes that they would use. He stated that the Board consists of 11 members and that you have to have six members to act on anything. It constitutes a quorum and the majority of those present is the decision of the Board. Also, that each Board member needs to remember as you function, which hat you're wearing and appropriately respond depending on which function you're performing. Further discussion was made and examples were given as the Board fulfills functions of all three branches of government at different times.

Mr. Nelson then discussed the conflict of interest and ethics act and the responsibilities the Board has to comply. He stated that even though you are not a state employee, by appointment to the position you're in that you are subject to the act. The general statement that you can't do something that would be in direct conflict with your responsibilities on the Board in creating a substantial conflict was brought to their attention. Mr. Nelson stated that since this is so general, you would need to deal with it on a case by case basis and if you need to recuse yourself at some point, you do that in order to avoid the conflict. Further discussion was made and examples were given.

Mr. Nelson discussed the open meeting act which governs the conduct of the Board. This act applies anytime you have a quorum. When this happens, you need to make sure that the compliance requirements are met. This is taken care of by Rick and his staff. Mr. Nelson then discussed open meetings and closed meetings and gave examples to the Board.

Finally, Mr. Nelson discussed, as Board members, what kind of liability they subject themselves to. He gave the definition of state employee "as members of a government entity board." The liability act of the State when you are serving in your capacity as a Board member applies to you. Mr. Nelson then gave examples of how this would apply.

**UTAH AIR QUALITY BOARD MEETING**  
**April 4, 2007**

**DRAFT MINUTES**

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**I. Call to Order**

Ernest Wessman called the meeting to order at 1:34:19 p.m.

Board members present:

Ernest Wessman	Dianne Nielson	Wayne Samuelson
Jim Horrocks	Stead Burwell	Steve Sands
Nan Bunker	Kathy Van Dame	Darrell Smith
Craig Petersen	Don Sorensen	

Executive Secretary: Richard W. Sprott

Because of the new Board members, Mr. Wessman asked the Board members to introduce themselves. Rick Sprott also introduced Melissa Yazhe as the new Division and Board secretary.

**II. Date of the Next Air Quality Board Meetings**

May 2, 2007 and June 6, 2007.

**III. Approval of the Minutes for April 4, 2007 Board Meeting**

Minor additions were made in the minutes by Ms. Van Dame to Item VIII.

- Darrel Smith made the motion to approve the March minutes with the addition. Nan Bunker seconded. The Board approved unanimously.

**IV. Propose for Public Comment: Repeal R307-122. General Requirements: Eligibility of Expenditures for Purchase and Installation Costs of Fireplaces and Wood Stoves that Use Cleaner Burning Fuels. Presented by Mat Carlile.**

Mat Carlile, Environmental Planning Consultant at DAQ, explained that R307-122 sets for the process for applying for a tax credit for cleaner burning fireplaces or woodstoves. However, the tax credit has been removed. Therefore, the rule is no longer authorized under a Utah statute. We recommend that a repeal of R307-122 be proposed for public comment.

Ms. Van Dame asked if this had just sunset or did the Legislature repeal it. Mr. Carlile stated that in 2006 one of the statutes was repealed and the other one lapsed in 2002. Ms. Van Dame asked if the tax credit was being used. Dave McNeill, Section Manager at DAQ, answered that yes it was. There were issues in how it was being implemented and the paperwork. The coordination between us and the Tax Commission was extremely difficult.

Ms. Nielson made the comment that there may not have actually been a determination by the Legislature, but that the tax structure has changed in the State this last year. Also, that the new tax structure does provide the equivalent of what would otherwise been seen as a number of incentives and tax breaks.

- Don Sorenson made the motion to propose for public comment: repeal R307-122 General Requirements: Eligibility of Expenditures for Purchase and Installation Costs of Fireplaces and Wood Stoves that Use Cleaner Burning Fuels. Nan Bunker seconded. The Board approved unanimously.

**V. Propose for Public Comment: Repeal and Re-enact R307-121. General Requirements: Eligibility of Expenditures for Purchase of Vehicles that Use Cleaner Burning Fuels for Corporate and Individual Income Tax Credits. Presented by Glade Sowards.**

Glade Sowards, Environmental Planning Consultant at DAQ, explained that one of the enabling statutes through clean fuel vehicle tax credit program was modified during the 2006 Legislative General Session. The Utah State Code was moved and amended to clarify that the tax credit is nonrefundable. This led to the DAQ staff to review R307-121 to determine whether changes were required as a result of the amendments to State Code. Staff identified two areas of interest. They identified instances where the State Code numbering changed so the rule needed to be changed accordingly. They also identified technical changes; there were enough modifications to the existing rule that staff used a “repeal and re-enact” format. The rule change would bring the rule in line with State Code and common administrative practice. Staff recommends that R307-121 be proposed for public comment.

Mr. Wessman had a question on the briefing sheet which read, “terms defined in the enabling statutes should not be redefined in statutes.” Mr. Sowards indicated that there was a correction made to this line and sent out in a subsequent packet.

Mr. Sorenson then asked if there were any concerns with lapse as we repeal and reinstate or is it covered. Mr. McNeill responded that they become effective on the same day and so there is no lapsing

- Kathy Van Dame made the motion to propose for public comment: repeal and re-enact R307-121, General Requirements: Eligibility of Expenditures for Purchase of Vehicles that use Cleaner Burning Fuels for Corporate and Individual Income Tax Credits. Steve Sands seconded. The Board approved unanimously.

**VI. Propose for Public Comment: Amend R307-405. Permits: Major Sources in Attainment or Unclassified Areas (PSD). Presented by Colleen Delaney.**

Colleen Delaney, Environmental Scientist at DAQ, explained that last year the Board adopted a rule to incorporate the federal permitting requirements for major sources, also known as PSD, by reference into R307-405. The purpose of this proposed rule change is to update the incorporation by reference to the most recent version of the CFR. In March 2006 the DC Court vacated a portion of the federal regulation, commonly referred to as the Equipment Replacement and Repair rule. This does not affect Utah’s program because we have not yet adopted the controversial provisions. Those provisions are specifically not included in the incorporation by reference. We also added some clarifying language to explain why certain provisions were not incorporated due to earlier court decisions. The only substantive change to the rule due to the updated incorporation date is that NOx will be added as a precursor to ozone in the PSD rule. Staff recommends that the Board propose the recommended changes to R307-405 for public comment.

- Craig Petersen moved that R307-405 be proposed for public comment to update the incorporation by reference in the most recent version of CFR. Nan Bunker seconded. The Board approved unanimously.

## **VI. Informational Items**

Mr. Wessman at this time indicated that the Board was going to hear the informational items next and then take on Item VII.

**A. Compliance. Presented by Bryce Bird.**

**B. HAPS. Presented by Robert Ford.**

**C. Monitoring. Presented by Bob Dalley.**

Mr. Dalley updated the Board on the latest air monitoring data.

## **VII. Dispositive Motions for IPSC and Sevier Power Plant Appeals. Presented by Fred Nelson.**

Mr. Wessman then made the Board aware that a stenographer was present and would record the final proceedings today. Jim Horrocks was announced as the chair for this portion of the meeting because Mr. Wessman was recusing himself and would be leaving the meeting.

Ms. Van Dame stated that she needed to declare a conflict of interest. She will recuse herself from voting but that she would participate in the discussion.

Mr. Sands stated that because of prior involvement as a consultant, he was recusing himself from discussion and the voting on this item.

Mr. Horrock indicated that with three members recusing themselves, the Board still had a quorum and would proceed.

- See transcript.
- Item 1 – Sierra Club’s Motion to Amend and the Summary Judgment in the Sevier Power case. Craig Petersen made the motion for Leave to Amend but denied the Motion for Summary Judgment and requested that the Executive Secretary formalize in writing the decision on an extension request made by SPC. Dianne Nielson seconded. The Board approved unanimously.
- Item 2 – Sierra Club’s Motions for Summary Judgment in the IPSC Appeal. Don Sorensen made the motion to deny Sierra Club’s Motion for Summary Judgment. Nan Bunker seconded. The Board approved unanimously, with Stead Burwell opposed.
- Item 3 – Motions for Judgment on the Pleadings on the IGCC issue. Stead Burwell made the motion to deny judgment on this issue. Craig Petersen seconded. The Board approved unanimously, with Don Sorensen and Darrell Smith opposed.
- Item 4 – Motion for Summary Judgment on the Pleadings on greenhouse gas issue for IPP and Sevier Power. Craig Petersen made the motion to approve the Motion for Judgment on the Pleadings on the greenhouse gas issue. Don Sorensen seconded. The Board approved unanimously.

- Item 5 – Motion of Judgment on the Pleadings on the IPP Unit Number 3. Motion was withdrawn by IPSC.

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Meeting was adjourned at 5:32:11 p.m.